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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,135	06/05/2001	David Seneor	3848-010270	3534

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,135

Applicant(s)

SENEOR, DAVID

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

REPEATED REJECTIONS

1. The 35 U.S.C. 102 rejections of claims 1, 3, 4, and 7-10 as anticipated by Robbins are repeated for the reasons previously of record in the Office Action mailed April 2, 2004, Pages 3-4 Paragraph 6.

2. The 35 U.S.C. 103 rejections of claims 2 and 6 over Robbins in view of Bartelloni are repeated for the reasons previously of record in the Office Action mailed April 2, 2004, Pages 5-6 Paragraph 7.

3. The 35 U.S.C. 103 rejection of claim 5 over Robbins in view of Mitchell are repeated for the reasons previously of record in the Office Action mailed April 2, 2004, Page 7 Paragraph 8.

NEW REJECTIONS

Claim Objections

4. Claims 3 and 7 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the

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claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Regarding claim 3, the limitation that the outer layer is made of polyurethane made without the addition of any solvents is already claimed in claim 1, therefore, claim 3 fails to further limit claim 1.

Regarding claim 7, the limitation that the second polyurethane based coating layer is made of polyurethane, without the addition of any solvents is broader than the limitation of claim 4, in which the layer is consisting of polyurethane without the addition of any solvents.

ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1, 3, 4, and 7-10 as anticipated by Robbins have been considered but they are not persuasive.

In response to Applicant's argument that Robbins teaches an inner layer, intermediate layer and outer layer, and not two reservoirs, in which the second reservoir consists of two layers, Robbins only teaches three layers as does the claims. The claims specifically in closed language claim three layers, one as a main reservoir and two combined as a secondary reservoir. In Robbins the carbon steel first layer is a main

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reservoir and the combination of the intermediate corrugated cardboard and other similar materials and the polyurethane layer forms the secondary reservoir. The fact that Robbins teaches the corrugated cardboard layer as an intermediate layer instead of an inner layer of the secondary reservoir does not change the fact that both Robbins and the claimed invention is an underground reservoir consisting of three layers.

In response to Applicant's argument that Robbins fails to teach that the paper is used only to prevent the polyurethane from adhering to the inner tank, this limitation is now found in the claims. The claims merely limit the reservoir to two reservoirs, in which the secondary reservoir consists of a paper material and polyurethane. Robbins teaches a first reservoir and a paper or cardboard layer in contact with the first reservoir and the outer polyurethane layer, so Robbins is limited to only those three layers and is within the scope of the current claim.

In response to Applicant's argument that at the time the Robbins patent was filed, the forming of an outer tank shell made of polyurethane without the addition of any solvents was not possible, the examiner disagrees. First, the reference provided by the applicant for evidence, is not persuasive because the article does not state that solventless polyurethane

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was not developed or used before the nineties, but merely states that in the nineties because of environmental concern increased research and development was directed toward substitution of CFC's. Second, the Hart patent (USPN 5,693,703) is provided for evidence that it was possible to form polyurethane coatings prior to the file date of the Robbins patent. Hart teaches that for over 40 years water-borne, or water-based polyurethanes have been in existence. The performance properties of these systems have been improved continuously. However, in the last few years, i.e. the early and mid-nineties based on the filing date of the Hart patent, aqueous polyurethanes have become commercially important because of environmental concerns with regard to VOC's (col.1, 1.20-38). Therefore, one of ordinary skill in the art would have recognized that solventless polyurethanes were known and possible prior to the Robbins patent and based on the fact that Robbins does not mention using any solvents to form the polyurethane it cannot be assumed without evidence that Robbins uses solvent-based polyurethanes.

6. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 2 and 5-6 over Robbins in view of Bartelloni and Mitchell respectively have been fully considered but they are not persuasive.

Applicant's only argument regarding these rejections is that the secondary references do not solve the deficiencies of Robbins and the answers to the arguments regarding the deficiencies of Robbins are shown above with regards to the 35 U.S.C. 102 rejections.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489.

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The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB

November 8, 2004


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/8/04